

**SPECIAL TERMS AND CONDITIONS TO BE INCLUDED IN CONTRACTS FUNDED
IN WHOLE OR IN PART
BY THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

The following are Special Terms and Conditions to be used for procurements funded by the American Recovery and Reinvestment Act of 2009. Other special terms and conditions may be developed and included when appropriate or as required by the Federal granting agency.

1. **GENERAL:** This Contract is governed, in part, by the provisions of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5 (the "Recovery Act" or "ARRA") and Federal Regulations and other guidance from the federal government implementing the Recovery Act (collectively, "Recovery Act Requirements" or "ARRA Requirements"), and the Contractor agrees that it will comply with all Recovery Act Requirements applicable to this contract. In the event of a conflict between the terms of this Contract and the Recovery Act Requirements, the provisions of the Recovery Act Requirements shall be controlling. The Contractor acknowledges that these Special Terms and Conditions may require changes due to future revisions of the Recovery Act Requirements, and Contractor agrees that it shall comply with any such changes upon receipt of written notification from the County of such changes. Such changes will become a material part of the Contract without the necessity of either party executing an amendment to this Contract. Contractor also agrees that it will provide all information and documentation required by the County in order to comply with the Recovery Act Requirements. Contractor agrees that, to the extent ARRA Requirements conflict with Commonwealth of Virginia or County of Loudoun, Virginia requirements, the ARRA Requirements shall control.
2. **D-U-N-S® NUMBER/ CCR Registration:** All Contractors are required to provide the County with their unique Dun & Bradstreet Data Universal Numbering System D-U-N-S® number prior to award.

In addition, all Contractors are required to register with the Central Contractor Registration (CCR). Registration information for the Central Contractor Registry can be found at: <http://www.ccr.gov/startregistration.aspx>.

3. **JOB CREATION AND RETENTION:** The Contractor shall provide to the County an estimate of the number of new positions created and filled, positions retained, or previously existing unfilled positions that are filled or retained as a result of this Contract. The estimated number shall be expressed as full-time equivalent (FTE), calculated cumulatively as all hours worked divided by the total number of hours in a full-time schedule, as defined by the Contractor. The Contractor shall update the information regarding jobs creation and retention on a quarterly basis, and shall provide each updated report to the County no later than ten business days before the end of each calendar quarter.

The Contractor shall provide a brief description of the types of jobs created or

jobs retained in the United States and outlying areas. This description may rely on job titles, broader labor categories, or the Contractor's existing practice for describing jobs provided the terms are widely understood and describe the general nature of the work.

DESCRIPTION OF THE TYPES OF JOBS CREATED OR RETAINED:

4. **AUDITING**: The Contractor shall retain all books, records, and other documents to this Contract for five (5) years after final payment. Section 902 of the American Recovery and Reinvestment Act of 2009 provides the U.S. Comptroller General and his representatives with the authority to:
- (a) Examine any records of the Contractor or any of its subcontractors, or any State or local agency administering such contract, that directly pertain to, and involve transactions relating to, the contract or any subcontract; and
 - (b) Interview any officer or employee of the Contractor or any of its subcontractors, or of any State or local government agency administering the contract, regarding such transactions.

Accordingly, the Comptroller General and his representatives shall have the authority and rights as provided under Section 902 of the Recovery Act with respect to this Contract, which is funded with funds made available under the Recovery Act. Section 902 further states that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of the Comptroller General.

Additionally, Section 1515(a) of the Recovery Act provides authority for any representatives of an appropriate inspector general appointed under Section 3 or 8G of the Inspector General Act of 1978 to examine any records or interview any employee or officers of the Contractor or its subcontractors working on this Contract. The Contractor is advised that any representatives of an appropriate Inspector General appointed under Section 3 or 8G of the Inspector General Act of 1978 have the authority to examine any record and interview any employee or officer of the Contractor, its subcontractors or other firms working on this Contract. This right of examination shall also include inspection at all reasonable times of the Contractor's plants, or parts of them, engaged in performing the Contract. Section 1515(b) further provides that nothing in this section shall be interpreted to limit or restrict in any way any existing authority of an Inspector General.

The County's contracting officer and other representatives of the County shall have, in addition to any other audit or inspection right in this Contract, all the audit and inspection rights contained in this section.

5. **BUY AMERICAN**: Section 1605 of the Recovery Act prohibits use of recovery

funds for a project for the construction, alteration, maintenance, or repair of a public building or public work unless all of the iron, steel, and manufactured goods used in the project are produced in the United States. The law requires that this prohibition be applied in a manner consistent with U.S. obligations under international agreements, and it provides for waiver by the head of the federal agency awarding the ARRA funds under three circumstances:

- (a) Iron, steel, or relevant manufactured goods are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality;
- (b) Inclusion of iron, steel, or manufactured goods produced in the United States will increase the cost of the overall project by more than 25 percent; or
- (c) Applying the domestic preference would be inconsistent with the public interest.

6. **WAGE RATE REQUIREMENTS:**

- (a) Section 1606 of the Recovery Act requires that all laborers and mechanics employed by contractors and subcontractors on projects funded directly by or assisted in whole or in part by and through the Federal Government pursuant to the Recovery Act shall be paid wages at rates not less than those prevailing on projects of a character similar in the locality as determined by the Secretary of Labor in accordance with subchapter IV of chapter 31 of title 40, United States Code. Pursuant to Reorganization Plan No. 14 and the Copeland Act, 40 U.S.C. 3145, the Department of Labor has issued regulations at 29 CFR parts 1, 3, and 5 to implement the Davis-Bacon and related Acts. Regulations in 29 CFR 5.5 instruct agencies concerning application of the standard Davis-Bacon contract clauses set forth in that section. The standard Davis-Bacon contract clauses found in 29 CFR 5.5(a) are incorporated into this Contract and any subcontracts that are in excess of \$2,000 for construction, alteration or repair (including painting and decorating).
- (b) Inquiries concerning the application of Davis-Bacon requirements to a particular federally assisted project should be directed to the Federal agency funding the project. The Secretary of Labor retains final coverage authority under Reorganization Plan Number 14.

Wage information for this project can be found at:

<http://www.wdol.gov/wdol/scafiles/davisbacon/VA48.dvb>

7. **REPORTING REQUIREMENTS:** Pursuant to Section 1512 of the ARRA, entities, including the County, receiving ARRA funds must submit a report to the federal government containing information on the use of ARRA funds no later than ten (10) calendar days after the end of each calendar quarter. Accordingly, Contractor agrees to provide the County with such information, no later than five (5) calendar days after the end of each calendar quarter, as is required by the County to comply with ARRA reporting requirements. Section 1512 of ARRA, its

implementing regulations (2 CFR §176.50), guidance provided by the White House Office of Management and Budget and the terms of the ARRA grant that provides funds for this Contract provide guidance on what information must be reported.

Be advised that Recovery Act funds can be used in conjunction with other funding as necessary to complete projects, but tracking and reporting must be separate to meet the reporting requirements of the Recovery Act and related guidance. For projects funded by sources other than the Recovery Act, Contractors must keep separate records for Recovery

8. **SUBCONTRACTOR FLOW-DOWN REQUIREMENTS:** Contractor agrees that it shall include these supplemental terms and conditions, including this requirement, in any of its subcontracts in connection with projects funded in whole or in part with funds available under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5.

9. **PUBLICATIONS**

- (a) You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.
- (b) An acknowledgment of DOE support and a disclaimer must appear in the publication of any material, whether copyrighted or not, based on or developed under this project, as follows:

Acknowledgment. “This material is based upon work supported by the Department of Energy [National Nuclear Security Administration] [add name(s) of other agencies, if applicable] under Award Number(s) [enter the award number(s)].”

Disclaimer. “This report was prepared as an account of work sponsored by an agency of the United States Government. Neither the United States Government nor any agency thereof, nor any of their employees, makes any warranty, express or implied, or assumes any legal liability or responsibility for the accuracy, completeness, or usefulness of any information, apparatus, product, or process disclosed, or represents that its use would not infringe privately owned rights. Reference herein to any specific commercial product, process, or service by trade name, trademark, manufacturer, or otherwise does not necessarily constitute or imply its endorsement, recommendation, or favoring by the United States Government or any agency thereof. The views and opinions of authors expressed herein do not necessarily state or reflect those of the United States Government or any agency thereof.”

10. **Protecting State and Local Government and Contractor Whistleblowers.**

The requirements of Section 1553 of the Act are summarized below. They include, but are not limited to:

Prohibition on Reprisals: An employee of any non-Federal employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, may not be discharged, demoted, or otherwise discriminated

against as a reprisal for disclosing, including a disclosure made in the ordinary course of an employee's duties, to the Accountability and Transparency Board, an inspector general, the Comptroller General, a member of Congress, a State or Federal regulatory or law enforcement agency, a person with supervisory authority over the employee (or other person working for the employer who has the authority to investigate, discover or terminate misconduct), a court or grant jury, the head of a Federal agency, or their representatives information that the employee believes is evidence of:

- gross management of an agency contract or grant relating to covered funds;
- a gross waste of covered funds;
- a substantial and specific danger to public health or safety related to the implementation or use of covered funds;
- an abuse of authority related to the implementation or use of covered funds; or
- as violation of law, rule, or regulation related to an agency contract (including the competition for or negotiation of a contract) or grant, awarded or issued relating to covered funds.

Agency Action: Not later than 30 days after receiving an inspector general report of an alleged reprisal, the head of the agency shall determine whether there is sufficient basis to conclude that the non-Federal employer has subjected the employee to a prohibited reprisal. The agency shall either issue an order denying relief in whole or in part or shall take one or more of the following actions:

- Order the employer to take affirmative action to abate the reprisal.
- Order the employer to reinstate the person to the position that the person held before the reprisal, together with compensation including back pay, compensatory damages, employment benefits, and other terms and conditions of employment that would apply to the person in that position if the reprisal had not been taken.
- Order the employer to pay the employee an amount equal to the aggregate amount of all costs and expenses (including attorneys' fees and expert witnesses' fees) that were reasonably incurred by the employee for or in connection with, bringing the complaint regarding the reprisal, as determined by the head of a court of competent jurisdiction.

Nonenforceability of Certain Provisions Waiving Rights and remedies or Requiring Arbitration: Except as provided in a collective bargaining agreement, the rights and remedies provided to aggrieved employees by this section may not be waived by any agreement, policy, form, or condition of employment, including any predispute arbitration agreement. No predispute arbitration agreement shall be valid or enforceable if it requires arbitration of a dispute arising out of this section.

Requirement to Post Notice of Rights and Remedies: Any employer receiving covered funds under the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, shall post notice of the rights and remedies as required therein. (Refer to section 1553 of the American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, www.Recovery.gov, for specific requirements of this section and prescribed language for the notices.).

11. False Claims Act

Recipient and sub-recipients shall promptly refer to the DOE or other appropriate Inspector General any credible evidence that a principal, employee, agent, contractor, sub-grantee, subcontractor or other person has submitted a false claim under the False Claims Act or has committed a criminal or civil violation of laws pertaining to fraud, conflict of interest, bribery, gratuity or similar misconduct involving those funds.

12. NOTICE REGARDING THE PURCHASE OF AMERICAN-MADE EQUIPMENT AND PRODUCTS -- SENSE OF CONGRESS

It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available under this award should be American-made.

*Special Note: Definitization of the Provisions entitled, “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” and “REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS (COVERED UNDER INTERNATIONAL AGREEMENTS) – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009” will be done upon definition and review of final activities.

13. REQUIRED USE OF AMERICAN IRON, STEEL, AND MANUFACTURED GOODS – SECTION 1605 OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

(a) Definitions. As used in this award term and condition—

(1) Manufactured good means a good brought to the construction site for incorporation into the building or work that has been—

(i) Processed into a specific form and shape; or

(ii) Combined with other raw material to create a material that has different properties than the properties of the individual raw materials.

(2) Public building and public work means a public building of, and a public work of, a governmental entity (the United States; the District of Columbia; commonwealths, territories, and minor outlying islands of the United States; State and local governments; and multi-State, regional, or interstate entities which have governmental functions). These buildings

and works may include, without limitation, bridges, dams, plants, highways, parkways, streets, subways, tunnels, sewers, mains, power lines, pumping stations, heavy generators, railways, airports, terminals, docks, piers, wharves, ways, lighthouses, buoys, jetties, breakwaters, levees, and canals, and the construction, alteration, maintenance, or repair of such buildings and works.

(3) Steel means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) Domestic preference.

(1) This award term and condition implements Section 1605 of the American Recovery and Reinvestment Act of 2009 (Recovery Act) (Pub. L. 111–5), by requiring that all iron, steel, and manufactured goods used in the project are produced in the United States except as provided in paragraph (b)(3) and (b)(4) of this section and condition.

(2) This requirement does not apply to the material listed by the Federal Government as follows:

To Be Determined

(3) The award official may add other iron, steel, and/or manufactured goods to the list in paragraph (b)(2) of this section and condition if the Federal Government determines that—

(i) The cost of the domestic iron, steel, and/or manufactured goods would be unreasonable. The cost of domestic iron, steel, or manufactured goods used in the project is unreasonable when the cumulative cost of such material will increase the cost of the overall project by more than 25 percent;

(ii) The iron, steel, and/or manufactured good is not produced, or manufactured in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or

(iii) The application of the restriction of section 1605 of the Recovery Act would be inconsistent with the public interest.

(c) Request for determination of inapplicability of Section 1605 of the Recovery Act . (1)(i) Any recipient request to use foreign iron, steel, and/or manufactured goods in accordance with paragraph (b)(3) of this section shall include adequate information for Federal Government evaluation of the request, including—

(A) A description of the foreign and domestic iron, steel, and/or manufactured goods;

(B) Unit of measure;

(C) Quantity;

(D) Cost;

- (E) Time of delivery or availability;
- (F) Location of the project;
- (G) Name and address of the proposed supplier; and
- (H) A detailed justification of the reason for use of foreign iron, steel, and/or manufactured goods cited in accordance with paragraph (b)(3) of this section. (ii) A request based on unreasonable cost shall include a reasonable survey of the market and a completed cost comparison table in the format in paragraph (d) of this section.
 - (iii) The cost of iron, steel, and/or manufactured goods material shall include all delivery costs to the construction site and any applicable duty.
 - (iv) Any recipient request for a determination submitted after Recovery Act funds have been obligated for a project for construction, alteration, maintenance, or repair shall explain why the recipient could not reasonably foresee the need for such determination and could not have requested the determination before the funds were obligated. If the recipient does not submit a satisfactory explanation, the award official need not make a determination.

(2) If the Federal Government determines after funds have been obligated for a project for construction, alteration, maintenance, or repair that an exception to section 1605 of the Recovery Act applies, the award official will amend the award to allow use of the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is nonavailability or public interest, the amended award shall reflect adjustment of the award amount, redistribution of budgeted funds, and/or other actions taken to cover costs associated with acquiring or using the foreign iron, steel, and/or relevant manufactured goods. When the basis for the exception is the unreasonable cost of the domestic iron, steel, or manufactured goods, the award official shall adjust the award amount or redistribute budgeted funds by at least the differential established in 2 CFR 176.110(a).

(3) Unless the Federal Government determines that an exception to section 1605 of the Recovery Act applies, use of foreign iron, steel, and/or manufactured goods is noncompliant with section 1605 of the American Recovery and Reinvestment Act. (d) Data. To permit evaluation of requests under paragraph (b) of this section based on unreasonable cost, the Recipient shall include the following information and any applicable supporting data based on the survey of suppliers:

Foreign and Domestic Items Cost Comparison

Description	Unit of measure	Quantity	Cost (dollars)*
Item 1:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			
Item 2:			
Foreign steel, iron, or manufactured good			
Domestic steel, iron, or manufactured good			

List name, address, telephone number, email address, and contact for suppliers surveyed. Attach copy of response; if oral, attach summary.

Include other applicable supporting information.

*Include all delivery costs to the construction site.